

6 Official Opinions of the Compliance Board 110 (2009)

Minutes – Contents – Level of detail – Transcript not required

Notice – Content – Agenda information not required

Notice – Timing – Absent evidence of intentional delay, posting on town's bulletin board six days in advance of meeting satisfied Act

May 18, 2009

Donald J. Barnes

Linda J. Barnes

The Open Meetings Compliance Board has considered your complaint alleging that the Poolesville Board of Zoning Appeals violated the Open Meetings Act in connection with a meeting on January 29, 2009. Specifically, your complaint alleged that the Board of Zoning Appeals failed to provide adequate notice in advance of the meeting and failed to produce accurate minutes of the proceedings. For the reasons explained below, we find that no violation occurred.

I

Complaint and Response

According to the complaint, on January 27, 2009, the complainants received in the mail from the Town of Poolesville a document captioned “agenda,” indicating that the Poolesville Board of Appeals would meet on January 29, 2009, at 7:00 p.m. at 19721 Beall Street. Included among the agenda items was a “request for reconsideration on special exception 001-08 – Mevissen.” Citing §10-506,¹ the complaint alleged that the Board of Zoning Appeals failed to “provide reasonable advance notice that [the members of the Board of Zoning Appeals] were to discuss and make a decision regarding a Motion for Reconsideration [that the complainants] had submitted three months prior ...” The complaint noted that two-day advance notice through the mail to a select group of lot owners does not qualify as adequate public notice. The complaint also alleged that the information included in the agenda “without elaboration was not enough information to understand the intent of the hearing.” The complaint noted that the complainants’ name was not mentioned on the agenda, thus, they “were caught unprepared ... and interested citizens did not know about the hearing.” The complaint also alleged that the

¹ Unless otherwise noted, statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

minutes of the January 29 meeting were incomplete in that, unlike certain prior meetings, no “line-by-line transcription” was provided and that “[t]he minutes do not represent the true tone of the hearing.” The recording equipment was “uncharacteristically not working while a Board member castigated [the complainants] for issues raised in [the] Motion.”²

In a timely response on behalf of the Board of Zoning Appeals, Alan M. Wright, Esquire, indicated that notice of the meeting was given and minutes were produced in accordance with the Act. Citing applicable provisions of the Open Meetings Act, the response stated that notice of the January 29, 2009, meeting was given “by the normal means ..., namely by posting the agenda notice, indicating the date, time and place of the meeting, on the town government bulletin board at Selby’s Market, the local grocery store.” A copy of the notice was included with the response, indicating that it was posted January 23, 2009. The response indicated that the notice was also mailed directly to the complainants on or about the same time. The complainants received the notice and attended the meeting. The response also noted that, while the complaint repeatedly referred to a “hearing,” the matter before the Board of Zoning Appeals was not a hearing, but rather an agenda item – a “discussion by the Board on the threshold issue of whether to reconsider.”

As to the allegation about the minutes, the response acknowledged that the document was “not in the usual form of a complete transcript, due to the malfunction in the recording equipment.”

However, the response argued that the minutes nevertheless met the requirements of the [Open Meetings Act.]” According to the response, the document reflects each item considered, the action that the public body took on each item, and each vote that was recorded. §10-509(c). A copy of the minutes were included with the response.

² The complaint also alleged violations under Article 66B of the Maryland Code and the Poolesville Zoning Ordinance and objected to the timeframe between the filing of the motion and the Board of Zoning Appeals’ action. However, the Open Meetings Compliance Board lacks authority to consider matters beyond the Open Meetings Act. *See, e.g., 5 OMCB Opinions* 1, n. 2 (2006); *6 OMCB Opinions* 85, 86 (2009). Thus, in submitting the complaint to the Board of Zoning Appeals for its response, we advised the Board that it need not address laws other than Open Meetings Act.

II

Analysis

A. Notice

Before a public body holds a meeting that is subject to the Open Meetings Act, it must provide public notice. Rather than dictate a specific durational requirement, the Act speaks in terms of giving “reasonable advance notice” of the meeting. §10-506(a). As we recently indicated, “[w]hether advance notice is ‘reasonable’ depends on the facts, namely, the interval between the time when a meeting ... is scheduled and notice to the public of the meeting.” 6 *OMCB Opinions* 85, 86 (2009). A public body is advised to give notice of a future meeting as soon as practicable after it has fixed the date, time, and place of the meeting. *Id.* Based on the record before us, it is not clear when the Board of Zoning Appeals actually scheduled its January 29, 2009 meeting. However, notice to the public was posted on the Town’s bulletin board at a local store six days in advance of the meeting. There is no evidence that the posting of the notice was delayed in order to discourage public attendance. Under the circumstances, we cannot find that the posting violated the Act.³

In terms of the content of the notice, the Act prescribes minimal requirements. The notice must include the date, time, and place of the meeting, and, if it is anticipated that all or part of the session may be closed to the public, a notation to that effect. §10-506(b). While we have frequently commended public bodies for providing an agenda in advance of a meeting, the Act does not require that an agenda be included. 4 *OMCB Opinions* 168, 172 (2005). Thus, allegations in the complaint concerning the description of the agenda item do not amount to a violation of the Act.

B. Minutes

The Open Meetings Act requires that, “[a]s soon as practicable after a public body meets, it shall have written minutes of its session prepared. §10-509(b). The minutes of a public meeting must reflect each item that the public body considered, the action that the public body took with respect to

³ The response from the Board of Zoning Appeals indicated that the notice sent to you “on or about the same time.” According to the copy submitted with the complaint, that notice was postmarked January 26, 2009 and you indicate that it was received January 27. However, in applying §10-506, our focus is on the public body’s notice to the public rather than individual property owners. Had notice only been sent to select property owners, the public body would have violated the Act. *See* 4 *OMCB Opinions* 178, 179 (2005).

each item, and each recorded vote. §10-509(c). Each item considered must be described in sufficient detail so that a member of the public who reviews the minutes can gain an appreciation of the issue under discussion. 4 *OMCB Opinions* 67, 70-71 (2004). To be sure, a transcript reflecting each element required would satisfy the requirements of the Act. 1 *OMCB Opinions* 162, 165 (1996). However, while a transcript may be necessary for some purposes, a transcript is certainly not required by the Act.

The minutes of the January 29 meeting of the Board of Zoning Appeals indicated, among other things, that the Board took up the request for reconsideration filed by the complainants in connection with the grant of a special exception for an optometry office at 19739 Selby Avenue, provided a summary of comments of two Board members, and the action taken in connection with the request -- that is, denial of the request for reconsideration by unanimous vote. The fact that the minutes were not in the form of a transcript is immaterial for purposes of the Open Meetings Act. While we cannot comment on whether the minutes reflected the “true tone of the [meeting],” an issue raised in the complaint, it is clear that the minutes reflect the minimal information required by the Act. Thus, we find no violation as to the content of the minutes.⁴

III

Conclusion

We find that the Board of Zoning Appeals did not violate the notice requirements under the Open Meetings Act in connection with a meeting held January 27, 2009. We further find that the minutes of the meeting satisfied the minimum requirements of the Act.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio Morales, Esquire

⁴ The Board of Zoning Appeals acknowledged that the recording equipment had malfunctioned. The Open Meetings Act leaves to the discretion of a public body whether to record its meetings. §10-509(c)(3)(i). Of course, if a meeting is recorded by the public body, the recording must be retained for at least one year. §10-509(e).